Supreme Court, U.S.
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No. 00-802

In The Supreme Court Of The United States

STEVE BRYAN,

Petitioner,

v.

THE CITY OF MADISON, MISSISSIPPI, ET AL.,

Respondent.

On Petition For A Writ of Certiorari to
the United States Court of Appeals For The 5th Circuit

PETITIONER'S REPLY BRIEF

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Respondents in their Brief in Opposition to Petitioner Steve Bryan's ("Bryan") Petition for Writ of Certiorari (the "Petition") advance two reasons why the Court should deny the Petition. The first reason is based on an incorrect interpretation of the facts of record. The second reason supports rather than detracts from the reasons articulated by Bryan for granting the Petition *i.e.*, that the entitlement analysis articulated in *Board of Regents v. Roth*, 408 U.S. 464, 577 (1972), is not applicable to cases involving land regulation.

I. BRYAN HELD AN EQUITABLE OWNERSHIP INTEREST IN THE PROPERTY AT ALL TIMES MATERIAL TO THE PROCEEDINGS.

At page 1 of the Brief in Opposition, Respondents claim that the Petition should be denied because "Bryan did not hold title or any 'equitable ownership interest in the site at any crucial state of the proceedings." However, this statement is simply wrong. Respondents cannot and do not dispute that Bryan had a contract to purchase the property when he filed his site plan and revised site plan. Respondents' entire contention is based on the fact that the contract purportedly expired on September 23, 1994. [1] However, virtually all of the arbitrary and capricious

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[1]Although Respondents reference an April 21, 1995 letter as evidence of the termination of Bryan's contract, the letter demonstrates that it was not until April 20, 1995 that the legal owners formally terminated the contract and requested Bryan not to undertake further activity with respect to the Property.

actions of Respondents took place prior to September 23, 1994. Specifically, these actions included:

(a) On September 30, 1993, Mayor Hawkins improperly vetoed the City's approval of Bryan's site plan and building permit applications. (Pet. App. G-75-76a)

(b) On November 3, 1993, Mayor Hawkins improperly and illegally attempted to circumvent the city's zoning ordinance by voting to re-zone the property. (Pet. App. B-7a) On March 16, 1994, the Circuit Court ruled that the re-zoning was improper and warned the Mayor against using the site approval procedures to block a landowner from lawfully using his property in response to public clamor (Pet. App. B-7a)

(c) On May 17, 1994, the Mayor vetoed the Board's approval of Bryan's new site plan and issuance of a building permit . The plan had been submitted by March 18, 1994, modified on April 7, 1994, and approved by the City Planning and Zoning Commission on April 25, 1994. (Pet. App. G-77a)

Thus, notwithstanding that the opinions of the Circuit Court of Madison County condemning the actions of Mayor Hawkins and the Board were issued in 1995 and 1996, the underlying actions of Respondents took place in 1993 and 1994 while Bryan held an equitable ownership interest on the Property.

II. RESPONDENTS' CITATION TO *ROTH* UNDERSCORES THE NECESSITY FOR THE COURT TO RESOLVE THE DIFFERENCE AMONG THE CIRCUIT COURTS ON THE APPLICABILITY OF THE ENTITLEMENT ANALYSIS OF *ROTH* TO LAND REGULATION CASES

At page 2 of the Brief in Opposition, Respondents contend that the Petition should be denied because "Bryan's 'claim' rests on mere expectations which were neither reasonable nor supported by the record". In support of this position, Respondents rely on the entitlement analysis articulated in *Roth, supra,* 408 U.S. at 577. However, Respondents' argument that Bryan has not demonstrated "a legitimate claim of entitlement" underscores the very crux of Bryan's Petition *i.e.* whether the entitlement analysis articulated in *Roth* has any application to cases involving land regulation. There is divergence of opinion among the federal circuit courts of appeals on this very issue which this Court should resolve.

In any event, Respondents completely mischaracterize the March 23, 1995 Opinion of the Circuit Court of Madison County and the May 11, 2000 Opinion of the Supreme Court of Mississippi to support their contention that Bryan was not "entitled" to approval of his site plan because the site plan was insufficient and inadequate. In the March 23, 1995 Opinion, which is appended to the Petition at Appendix H, the Circuit Court did not find the site plan insufficient and inadequate. To the contrary, the Circuit Court found that "Bryan appears to have substantially complied with an extraordinary

construction review process." (Pet. App. H-99a) The Circuit Court determined that the City's actions in the review of Bryan's site plan and its imposition of certain conditions thereto, were unreasonable, arbitrary and capricious and remanded the case to the City for further proceedings consistent with the Opinion. The Circuit Court, in issuing the remand order, expressly cautioned the City that "the site review process may not be used as a device by which to improperly interfere with the property rights of a landowner." (Pet. App. H-97, 98a).

In the May 11, 2000 Opinion, *Madison v. Bryan*, 763 So. 2d 162 (2000), the Supreme Court made no findings regarding the site plan submitted by Bryan. The Supreme Court's Opinion focused on Bryan's standing to appeal the City's wrongful denial of his site plan since as of the time of the appeal, Bryan's contract to purchase the Property had expired. Further, in reversing the Circuit Court's award of sanctions against the City in the form of attorneys fees, the Supreme Court did not determine that the award of attorneys fees in favor of Bryan were not warranted but instead remanded the matter to the Circuit Court for more specific findings of fact, conclusions of law, and authority in support of the award.

Respectfully submitted,

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